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16 UNITED STATES DISTRICT COURT
17 FOR THE NORTHERN DISTRICT OF CALIFORNIA

18 SERVICE EMPLOYEES INTERNATIONAL UNION,
19 LOCAL 790,

20 Plaintiff,

21 v.

22 JOSEPH P. NORELLI, Individually, and in his
23 capacity as REGIONAL DIRECTOR, NATIONAL
24 LABOR RELATIONS BOARD, REGION 20; *et al.*,

25 Defendants.

CASE NO. 3:07-cv-2766 PJH

**[PROPOSED] ORDER GRANTING
INTERVENTION**

HEARING DATE: Wednesday, 11 July
2007

TIME: 9:00 a.m.

**COURTROOM OF JUDGE HAMILTON,
COURTROOM 3, 17TH FLOOR**

26 The motion to intervene filed by Stephen J. Burke, Jr. (“Burke”) came on for hearing before
27 this Court on Wednesday, 11 July 2007, at 9:00 a.m., in Courtroom 3 of the United States District
28 Court for the Northern District of 25 California, located at 450 Golden Gate Avenue, 16th Floor, San
Francisco, California. Having considered all papers filed in support of and in opposition to the motion,
the authorities submitted by Burke, and all other matters presented, and for the reasons set forth in this
order, this Court hereby GRANTS that motion.

In this action, Plaintiff Service Employees International Union, Local 790 (“Local 790”), seeks
to enjoin the NLRB from holding the deauthorization election that Burke sought in *Covenant Aviation*

1 *Security, LLC*, 349 NLRB No. 67 (2007). Burke has demonstrated that he meets the requirements of
2 Rule 24(a), FED.R.CIV.P., which governs intervention as of right in federal lawsuits.

3 First, Burke's motion is timely, having been filed within one week after the initiation of this
4 action and prior to any discovery, motions, or case management conferences.

5 Second, the challenged deauthorization election was filed by Burke, and he has demonstrated
6 an interest in defending that election process. He has standing to pursue his interests. *Automobile*
7 *Workers Local 283 v. Scofield*, 382 U.S. 205 (1965) (individual employees have standing to intervene
8 in appellate proceedings concerning the unfair labor practice charges they file with the NLRB).

9 Third, the relief sought by Local 790, an injunction against the holding of the election sought
10 by Burke, would impede Burke's exercise of his statutory rights under 29 U.S.C. § 159(e).

11 Fourth, Plaintiff Local 790 has interests contrary to Burke. Defendants represent the interests
12 of the Federal government and the public at large and therefore may not adequately represent Burke's
13 interests. See *Forest Conservation Council v. United States Forest Service*, 66 F.3d 1489, 1489 (9TH
14 CIR.1995).

15 Even if Burke was not entitled to intervene as of right, he has fulfilled the requirements set
16 forth in Rule 24(b), FED.R.CIV.P., for permissive intervention, in that he seeks to address a common
17 question of law (whether the NLRB should be enjoined under the narrow *Leedom v. Kyne* doctrine
18 from conducting his deauthorization election, based solely upon the timing of his "showing of interest"
19 under 29 U.S.C. § 159(e)). His intervention will neither delay nor prejudice the rights of the original
20 parties. Defendants do not oppose Burke's intervention.

21 For these reasons, Burke may intervene as of right pursuant to Rule 24(a), FED.R.CIV.P.

22 IT IS SO ORDERED.

23 DATED: _____ 2007

24
25 _____
26 HON. PHYLLIS J. HAMILTON
27 United States District Judge

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Thursday, 31 May 2007, 15:37:48 PM

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing **[Proposed] Order Granting Motion for Leave to Intervene by Stephen J. Burke, Jr.**, were deposited in the United States Mail, first class postage prepaid, and sent *via* e-mail, addressed to:

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this 31st day of May, 2007.

/s/ W. James Young

W. JAMES YOUNG